

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DAVID W. PENNINGTON, NANCY J.	)	
THORNER, PAUL M. TAIT, and JAMES P.	)	
ECONOMOS, individually and on behalf of all	)	
others similarly situated,	)	
	)	No. 11-cv-04754
Plaintiffs,	)	
v.	)	Hon. Joan H. Lefkow
	)	
ZIONSOLUTIONS LLC and THE BANK OF	)	
NEW YORK MELLON,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS OR STRIKE  
PLAINTIFFS' AMENDED COMPLAINT**

Defendants *ZionSolutions* LLC and the Bank of New York Mellon move pursuant to Fed. R. 12(b)(6) for an order dismissing Plaintiffs' Amended Complaint. In the alternative, Defendants move pursuant to Fed. R. Civ. P. 12(f) for an order striking certain impertinent, immaterial and scandalous allegations from the Amended Complaint. In support of their motion, Defendants state as follows:

1. Defendants filed their motion to dismiss or strike Plaintiffs' original Complaint on September 13, 2011 (Dckt. 15). The motion to dismiss was fully briefed as of October 26, 2011. Defendants argued that the Complaint failed to state any claim upon which relief could be granted and that if any claims were not dismissed, the Court should strike certain allegations on the basis that they were impertinent, immaterial, and scandalous.

2. On July 6, 2012, the Court entered an order dismissing the Complaint *sua sponte*. (Dckt. 28). The Court noted that Plaintiffs had failed to adequately allege diversity jurisdiction under 28 U.S.C. § 1332 because they had not identified the citizenship of all members of

defendant *ZionSolutions* LLC. The Court granted Plaintiffs leave to file an amended complaint correcting this jurisdictional deficiency. Plaintiffs did so by filing their Amended Complaint on July 6, 2012. (Dckt. 30).

3. Other than correcting the jurisdictional allegations as to *ZionSolutions* (Am. Compl. ¶ 5), the Amended Complaint is in all respects identical to the original Complaint.

4. Defendants now move to dismiss the Amended Complaint. Because the Amended Complaint is identical to the original Complaint for purposes of the arguments made in Defendants' motion to dismiss and Plaintiffs' response, Defendants submit that the Court should refer to the briefing on the prior motion to dismiss – *i.e.*, Defendants' Memorandum in Support of Their Motion to Dismiss (Dckt. 16), Plaintiffs' Opposition to Defendants' Motion to Dismiss (Dckt. 20), and Defendants' Reply in Support of Their Motion to Dismiss (Dckt. 21) – in resolving this motion.

WHEREFORE, Defendants respectfully request that the Court dismiss the Amended Complaint with prejudice.

Respectfully Submitted,

Dated: July 20, 2012

ZIONSOLUTIONS LLC and  
THE BANK OF NEW YORK MELLON

By: /s/ Scott T. Schutte  
One of their attorneys

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**CERTIFICATE OF SERVICE**

I, Scott T. Schutte, an attorney, hereby certify that I filed the foregoing document electronically through the Court's ECF filing system, which will cause a true and correct copy to be served via e-mail on all ECF-registered counsel of record, this 20th day of July 2012.

/s/ Scott T. Schutte  
Scott T. Schutte